itself for the purposes of the amendment within the custody of the court, it would seem that scarcely an instance could arise under the operation of such a rule where such a thing as property not within the custody of the court would exist. That such would be the result is adequately illustrated in the application of this theory to the principal case, where the property was in the possession of a third person, the defendant, and the bankrupt, as well as the plaintiff, had merely a claim against it. Clearly then, since the amendment gives the trustee in such a case only the interest of a judgment creditor with execution returned unsatisfied, the plaintiff's lien should prevail.

STATUTORY LIABILITY OF STOCKHOLDERS FOR INTEREST.—It has been frequently stated that, as a general rule, after the property of an insolvent corporation has passed into the hands of a receiver, interest is no longer allowed to accrue on the claims against the fund.[1] The truth of this statement is not due to the obligations having in any way lost their interest-bearing quality, but results from the purely practical consideration that in the case of receiverships the assets usually are inadequate to satisfy all claims. As was recently pointed out by the Supreme Court,[2] it would be manifestly absurd to contemplate that by securing the appointment of a receiver, the debtor or trustee could stop the running of interest on claims of the highest dignity. Of course, interest will never be computed on preferred claims to the prejudice of the claims of unpreferred creditors,[3] and indeed, whenever the funds are insufficient, it will not be allowed to accrue after the property passes *in custodiam legis*.[4] On the other hand, it is equally well recognized that where the assets of an insolvent corporation, either through good fortune or good management, prove ample to meet all its obligations in full, interest as well as principal will be paid.[5]

It is quite obvious that where the statutory liability of the stockholders of a corporation is unlimited, each being bound to pay his proportionate share of the entire corporate debt, their liability is commensurate with that of the corporation, and hence properly includes interest, which merely compensates creditors for unjust delay and is as much a part of the debt as the principal itself.[6] Furthermore, as was held in the recent case of *Lamar* v. *Taylor* (Ga. 1914) 80 S. E. 1085, even where the liability of the stockholders is limited to a fixed amount, interest will be added to the principal of the debt provided that the total does not exceed the statutory limit. In two decisions which are frequently cited as being in conflict with this doctrine, the view was expressed that the shareholder's liability did not properly ex-

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[1]Thomas *v.* Western Car Co. (1893) 149 U. S. 95; Tredegar Co. *v.* Seaboard Air Line Ry. (C. C. A. 1910) 183 Fed. 289.

[2]American Iron & Steel Mfg. Co. *v.* Seaboard Air Line Ry. (Supreme Court, Oct. Term, 1914) No. 233. Not yet reported.

[3]See 3 Columbia Law Rev. 120.

[4]N. Y. Security & Trust Co. *v.* Lombard Investment Co. (C. C. 1896) 73 Fed. 537.

[5]See 12 Columbia Law Rev. 268; American Iron & Steel Mfg. Co. *v.* Seaboard Air Line Ry., *supra*.

[6]Zang *v.* Wyant (1898) 25 Colo. 551; Wells, Fargo & Co. *v.* Enright (1900) 127 Cal. 669.

tend to interest;[7] but these apparent exceptions arose under a peculiar statute, which provided not for the payment of all corporate debts, but for the redemption of unpaid corporate bills at par, and hence could not be fairly construed to contemplate interest, of which no mention was made.[8] The rule laid down in *Lamar* v. *Taylor* seems, therefore, to stand unchallenged, and is certainly supported by an overwhelming preponderance of judicial opinion.[9]

Moreover, where a stockholder refuses to pay on demand and causes a creditor delay in enforcing his rights, it is held in most jurisdictions that interest will run on the claim against the shareholder, even though this results in increasing his total liability beyond the amount fixed by law.[10] Several courts have denied this principle on the ground that the liability of the stockholders is to be sought in the statute alone, and the latter must be strictly construed.[11] On the other hand, the rule that when a stockholder contests the creditors' claims interest will accrue on the amount of his obligation from the date of the commencement of the action against him,[12] or in the case of national banks from the date fixed for payment by the Comptroller of the Currency,[13] or, in short, from the moment the liability becomes liquidated,[14] seems only just and reasonable. If the stockholder pays his liability as soon as the amount thereof is ascertained, he obtains a complete discharge;[15] and interest, even when it is in excess of the fixed limit, is imposed solely in order to compensate the creditors for the loss of the use of their money.[16] It would seem, therefore, that the statutes imposing this liability are of a compensatory rather than of a penal nature, and consequently may be broadly construed.

ADMISSION OF DYING DECLARATIONS.—Dying declarations were admitted originally in all cases, civil or otherwise; there was even no distinction made between different kinds of criminal actions.[1] Their admission is not considered to be in conflict with the general rule of evidence which excludes all hearsay except where the necessity of the case demands better evidence or where the particular circumstances are such

[7]Crease *v.* Babcock (Mass. 1845) 10 Metc. 525, 568; Grew *v.* Breed (Mass. 1845) 10 Metc. 569, 577.

[8]See note to Flynn *v.* American Banking & Trust Co. (Me. 1908) 19 L. R. A. [N. S.] 428, 430.

[9]Richmond *v.* Irons (1887) 121 U. S. 27, 63; Wheeler *v.* Millar (1882) 90 N. Y. 353; Cumberland Lumber Co. *v.* Clinton Hill Lumber Co. (1903) 64 N. J. Eq. 521.

[10]4 Thompson, Corporations (2nd ed.) § 4849; Burr *v.* Wilcox (1860) 22 N. Y. 551; Mason *v.* Alexander (1886) 44 Oh. St. 318, 336; Millisack *v.* Moore (1898) 76 Mo. App. 528.

[11]Cole *v.* Butler (1857) 43 Me. 401; Sackett's Harbour Bank *v.* Blake (S. C. 1851) 3 Rich. Eq. 225; Adams *v.* Clark (1906) 36 Colo. 65; Munger *v.* Jacobsen (1881) 99 Ill. 349.

[12]Ramsden *v.* Keene Bank (C. C. A. 1912) 198 Fed. 807; Handy *v.* Draper (1882) 89 N. Y. 334.

[13]Casey *v.* Galli (1876) 94 U. S. 673.

[14]See Nat. Commercial Bank *v.* McDonnell (1890) 92 Ala. 387.

[15]1 Cook, Corporations (6th ed.) § 225 (d).

[16]See Brainard *v.* Jones (1858) 19 N. Y. 35.

[1]1 Greenleaf, Evidence, § 156a; 2 Wigmore, Evidence, § 1431.